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BRIEF FOR APPELLANT

Supreme Court of the United States

OCTOBER TERM, 1929

No. 485

GABRIEL TOOMBS, APPELLANT

vs.

CITIZENS BANK OF WAYNESBORO

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

(34,616)

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JURISDICTION.

Rule 12, Par. 1, has been complied with, and this court has assumed jurisdiction of this case to the extent of its order.

STATEMENT OF THE CASE

(Citations are to the printed record.)

Citizens Bank of Waynesboro was chartered February 2, 1898, under the general law for incorporation of banks in Georgia. Toombs acquired and owned six shares of stock in the bank prior to January 1, 1920 (R-13, 19). When the bank was chartered, and when Toombs acquired his stock the act of December 16, 1895 (Printed in the appendix) was of force. That act provided that when the capital stock of a bank was found by the bank examiner to be impaired he might call on the bank to make good the impairment within 90 days, and if not restored by a voluntary assessment, the Governor might direct a proceeding to wind up the bank. In 1919 the General Assembly passed a general banking law which went into effect January 1, 1920 (Ga. Laws 1919, 135 et seq.) Sections 1, 2 and 3 of Article 6 of tha t act were amended by the Act of August 26, 1925 (Ga. Laws 1925, 119-126) so that after the passage of that act the law provided that when the capital stock of any bank was found by the Superintendent of Banks to be impaired as much as ten per cent he should notify the bank to make good the impairment within 60 days, by an assessment on the stockholders, and the officers receiving the notice were required to call a special meeting of the stockholders to levy the assessment. A majority of the oustanding stock constituted a quorum to hold the meeting, but a majority only of the stock present at the meeting was required to levy the assessment. When the assessment was so made, the bank was permitted to sell enough of the stock of any stockholder who did not pay the assessment t opay it, or to sue him and recover a judgment for the full amount of the assessment, at its option. This act did not require any form of notice to the stockholders of the meeting at which the assessment was required to be levied (See appendix for the act).

August 16, 1926, the bank became insolvent. The Superintendent of Banks took charge, and himself levied an assessment on the stockholders in the full amount of their

statutory liability. (R-13). Oct. 22, 1926, this assessment was cancelled (R-14), Oct. 23, 1926, a stockholders meeting was held at which 136 shares of stock of a total of 250 shares was represented (R-14). The proceedings prior to and at this stockholders meeting appear on pages 15 and 5 of the record, and were: Oct. 8, 1926, a directors meeting was held, attended by five directors, at which a motion was passed calling the stockholders meeting to be held Oct. 23, 1926 (R-15). Oct. 23, 1926, four of these directors and J. H. Whitehead held the stockholders meeting and levied the assessment sued for in this case (R-5). At the time of these proceedings Toombs resided in Tampa, Fla. (R-13). Oct. 8, 1926, a letter was mailed notifying Toombs of the proposed meeting, addressed not to his residence at Tampa, but to Washington, Ga. (R-15, 16). Except for the statement that this letter was stamped and addressed to Washington, Ga. and deposited in the post office, there is no evidence of any effort to notify Toombs. (Note par. 5 of the petition (R-5) is part of the agreed statement of facts (R-13, 16). Toombs did not attend the meeting, and has had no official connection with the bank since its insolvency. (R-14).

The capital of the bank was $25,000.00. Its debts exceeded its assets, $55,422.76. Certain depositors reduced their claims $30,422.76, to make the re-opening of the bank possible. (R-13). Suit was filed to Wilkes Superior Court, the allegations making a case based exclusively on the liability of Toombs to pay this particular assessment (R-4, 5). Toombs by his answer admits the making of the assessment, but denies his liability; he demurs and answers that the proceedings levying this assessment against him are void because the statute providing for the assessment provides for no notice to the stockholders of the intended meeting, and is therefore void because contrary to the due process of law provisions of the fourteenth amendment to the constitution of the United States. (R-8, 10). The demurrer was overruled (R-12) and on an agreed statement of facts (R-13, 16) judgment was rendered in favor of the bank. Exception was taken to the Supreme Court of Georgia, which decided the statute was void as applied to Toombs, withdrew that decision, and rendered the decision here appealed from, two justices of that court dissenting. (R-19, 22).

ASSIGNMENT OF ERRORS

1. The court erred in not holding that sections 1, 2, and 3 of Article 6 of the Act of August 16, 1919, creating the department of Banking (Acts 1919, pp. 152) as amended by the act of August 26, 1925, (Acts 1925, pp. 119-126) were unconstitutional and void because they violate the due process clauses of the State and Federal constitutions to wit, the fourteenth amendment to the constitution of the United States, because said sections do not provide for notice to be given to each stockholder of the special meeting of stockholders at which assessments provided for in said sections of said statutes are required to be made.

2. The court erred in holding that sections 1, 2 and 3 of Article VI, of the Act of August 16, 1919, creating the department of banking (Acts 1919, pp. 135, 152) as amended by the act of August 26, 1925 (Acts 1925, pp. 119, 126) were constitutional and valid, and did not contravene the provisions of the fourteenth amendment to the constitution of the United States, by denying to appellant Gabriel Toombs, due process of law, because at the time said Gabriel Toombs acquired his stock in Citizens Bank of Waynesboro, the only provision of the laws of Georgia which authorized an assessment by stockholders upon themselves being the provisions of the act of December 16, 1895, which provided that upon a determination by the State bank examiner that the capital stock of a bank was impaired, the bank should be required to levy an assessment to restore its capital, and the only penalty provided by said statute being that on the failure to levy such assessment, the Governor should proceed to forfeit the charter of the bank, and by the act of August 16, 1919 (Acts 1919, pp. 132, 152) as amended by the act of August 26, 1925 (Acts 1925, pp. 119, 126) the General Assembly of Georgia having provided that upon a determination by the Superintendent of Banks that the capital of a bank had been impaired as much as ten per cent, the officers of said bank should call a meeting of the stockholders of the bank, at which special meeting a quorum should consist of a majority only of the stock outstanding, and under such statute a majority of the quorum present, at such meeting, which majority of such quorum might be a minority of the total stock outstanding, was authorized

by their vote to levy an assessment on all the stockholders, and after the levy of such assessment, said bank being authorized at its option to sue the stockholder for the full amount of said assessment, recover a judgment therefor and subject all of the property of the stockholder against whom the assessment had been levied to the payment of the same was a denial of due process of law to the apellant Gabriel Toomba, because the special meeting of stockholders so provided for was in effect a judicial tribunal erected by the State for the purpose of exercising the judicial and discretionary act of determining whether such assessment should be levied and the bank continued in operation or should not be levied and the bank liquidated as an insolvent bank, and said statutes having made no provision whatever for notice to all the stockhoders of said bank so that each stockhoder as a result of such notice might attend such meeting and be heard on the question whether or not such assessment was provident or improvident, and said statutes providing that a minority of the stockholders might be authorized to levy such assessment without notice to all the stockholders was and is in violation of the provisions of the fourteenth amendment to the constitution of the United States by denying to the stockholders not required to be notified the due process of law which would arise from notice of such meeting.

3. The court erred in holding that the capital of said bank having been impaired $55,422.76, and in order to make an assessment sufficient to restore the capital of said bank creditors and depositors were required to write off of their claims the sum of $30,422.76, so that a levy of an assessment of 100 per cent would restore the capital of the bank, the levy of such assessment under the facts of this case was a valid and binding and provident exercise of the power granted to a minority of the stockholders without requiring notice to all the stockholders.

ARGUMENT.

This record raises no question of the right of a state to amend its banking laws so that the change would affect the rights of stockholders in banks existing at the time of the enactment of the new laws. The exact question here is, whether having amended the existing laws so that pro-

vision is made for the levy of assessments by the stockholders themselves at a special stockholders meeting to restore the impaired capital of the bank, due process of law was denied to this particular stockholder because the statute providing for such assessments did not require notice of the stockholders meeting to all the stockholders. The statute, after providing that when the capital stock of a bank becomes impaired the Superintendent of Banks may direct the officers to call a special meeting of stockholders to assess each shareholder an amount sufficient to restore the capital, makes the following provisions matreial to this case:

"At any such special meeting of the stockholders, a majority of the stock outstanding at the time shall be deemed a quorum, and such assessment may be made upon a majority vote of the quorum present.

"The bank shall, in addition to the right herein given to sell said stock also have the right to sue the stockholder for the full amount of said assessment in the event that said stockholder shall fail to pay the assessment ~~in the event that said stockholder shall fail to pay the assessment~~ so levied, in lieu of the sale of such stock and at the option of the bank" (Ga. Laws 1925, p. 126, set out in appendix.)

In Smith vs. Mobley, 166 Ga. 195, the Supreme Court of Georgia determined that this stockholders assessment was a purely voluntary act on the part of the stockholders and that it was their righ to elect whether they would assess themselves to restore the impaired capital or would permit the liquidation of the bank by the Superintendent of Banks as an insolvent bank.

The provision of the statute above quoted is not a substitute for the stockholders liability to creditors of the bank, amounting to a sum equal to the par value of the stock, which is covered by sec. 1 of Art. XVIII of the Banking Act 1919, (Ga. Laws 1919, p. 189 set out in the appendix). Its purpose is to continue the business of the bank as a going concern. The statutory liability applies only to an insolvent bank in process of liquidation.

Delano vs. Butler, 118 U. S. 634.

Since the statute here under consideration, the text of the material parts of which is set out in the appendix, makes no provision whatever for notice to a stockholder

of this meeting, the single question here for decision is, does such a statute, permitting a minority of the stockholders to procure the attendance of a bare majority of the outstanding stock at a meeting, and at such meeting authorizing such minority to vote an enforcable liability against all the stock, denies to those stockholders who are absent due process of law.

We do not contend that due process of law as defined by this and other courts means any particular form of proceedure. It does mean such notice of the intention to fix a liability, and such opportunity to attend and be heard, before liability is fixed, as is usual, proper, and protective of the essential rights of the citizen in the possessio nof his property. The form of process, the kind of notice, and the extent and nature of the opportunity to be heard, are determined by the particular forum in which the citizens rights are to be affected. In this case we contend that due process of law required notice of the intention to hold this stockholders meeting, an opportunity to attend it, the right to exercise his privilege as a stockholdholder to discuss the assessment, cast his ballot for or against it, as he saw fit, and to have every stockholder notified of the meeting that all of them might attend, all might take part in the discussion, and all might after discussion express their preference on the question whether or not the bank should continue to operate or should be liquidated.

Until this act was passed, the decisions of the courts of Georgia were uniform that an increase of the liability of the stockholder was a material alteration of his contract, an increase of the capital stock was a material change of his liability, and was void unless concurred in by an unanimous vote of the stockholders. Neither the corporation itself, nor the state, although the right to amend charters was reserved by it, could affect the righs of stockholders wihout their unanimous consent.

Winter vs. Muscogee R. R. Co., 11 Ga. 438.

Snook vs. Ga. Imp. Co., 83 Ga. 61, 65.

Alexander vs. A. & W. P. R. R., 108 Ga. 157.

The Constitution of Georgia contains this provsiion:

"No grant of special privileges or immunities shall be revoked, except in such manner as to work no injustice to the corporators or creditors of the corporation."

Civil Code, 1910, No. 6390.

On the insolvency of a bank under the Georgia law, each stockholder was liable to pay to its creditors the par value of his stock in addition to his original subscription. (Ga. Laws 1919, p. 186, see appendix) Under that condition his liability was fixed:

"The obligation of this conrtact binds a stockholder to pay t othe creditors of the corporation an amount sufficient to pay the debts of the corporation which its assets will not pay up to an amount equal to the stock held by each stockholder. That is his conrtact and the duty which the statute imposes, and that is his obligation. Any statute which took away the benefit of such contract or obligation would be void as to the creditor, and any attempt to increase the obligation beyond that incurred by the stockholder would fall within the prohibition of the constitution."

Bernheimer vs. Converse, 207 U. S. 516, 530.

Most of the cases involving the issue of due process of law, fall within one of two classes. Either in a judicial proceeding there is a want of the formality required to give the party an opportunity to present his claim or defense to the tribunal clothed with the authority to grant or deny him relief, or in the process of assessing taxes, the taxpayer is denied an opportunity to be heard before his taxes are fixed. Neither of these situations is exactly parallel to the due process of law necessary to protect the rights of a stockholder in a corporation which is clothed with the authority to increase the liability of each stockholder by the act of all or a part of the stockholders. When the differences in the form of proceedure in the various tribunals are considered and allowed for, however, the essential requirement of notice, and an opportunity to he heard before the liability becomes fixed and determined, remain as the foundation stones of due process. Whatever provides this notice and its corresponding opportunity to be heard before a properly constituted tribunal, is due process. Whatever denies these essentials is lack of due process. We therefor quote the following case, not as being directly in point, but as illustrating what is essential in any forum to make due process of law.

"Due process of law as applied to judicial proceedings instituted for the taking of private property for public use

means therefore such process as recognizes the right of the owner to be compensated if his property be wrseted from him and transferred to the public. The mere form of the proceeding instituted against the owner even if he be admitted to defend can not convert the process used into due process of law, if the necessary result be to deprive him of his proprty without compensation."

C. B. & Q. R. R. vs. Chicago, 166 U. S. 226, 236.

"The validity of every judgment depends upon the jurisdiction of the court before it is rendered, not upon what may occur subsequently."

Pennoyer vs. Neff, 95 U. S. 714, 728.

"Due process of law requires that at some stage of the proceeding, before the tax becomes irrevocably fixed, the taxpayer must have an opportunity to be heard, of which he must have notice, whether personal, by publication, or by some statute fixing the time and place of the hearing."

Turner vs. Wade, 254 U. S. 64, 68.

"But where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

Londoner vs. Denver, 210 U. S. 373, 385.

"There is no course of reasoning as to the character of an assessment upon lots for a local improvement by which it can be shown that any juridiction to collect the assessment personally from a non resident can exist. The state may provide for the sale of the property upon which the assessment is laid, but it can not under any guise or pretense proceed further and impose a personal liability upon a non-resident to pay the assessment, or any part of it. To enforce an assessment of such a nature against a non-resident, so far as his personal liability is concerned would amount to the taking of property without due process of law, and would be a violation of the Federal Constitution.

"The principle which renders void a statute providing for the personal liability of a non-resident to pay a tax of this nature is the same which prevents a state from taking jurisdiction through its courts, by virtue of any statute, over a non-resident not served with process within the state, to enforce a mere personal liability, and where no property of the non resident has been seized or brought under the control of the court."

Dewey vs. DesMoines, 173 U. S. 192, 203, 3.

"It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them, and give them a right to a hearing and an opportunity to be heard."

Coe vs. Armour Fertilizer Works, 237 U. S., 413, 424.

Security Trust Co. vs. Lexington, 203 U. S. 323, 333.

Central of Ga. Ry. vs. Wright, 207 U. S. 127, 138.

L. & N. R. R. vs. Stock Yards Co., 212 U. S. 132, 141

The Banking Laws of the State of Georgia, contained in Ga. Laws, 1919, on pages 135, 222, provide for seven special stockholders meetings. In Art. 7, Sec. 25, on page 162, a meeting to elect an agent for a liquidated bank, in Art. IX, sec. 2, on page 169, a meeting to authorize the amendment of a charter, in Art. X, sec. 1, on page 172, a meeting fo rthe renewal of a charter, in Art. XII, sec. 1, on page 176, a meeting for conversion of a national bank to a state bank, in Art. XIII, sec. 2, on page 179, a meeting for the consolidation of banks, in Art. XIV., sec. 1, on page 181, a meeting for the voluntary liqudiation of a bank, there is special provision made for stockholders meetings, the details of the holding of each of which, and notice of which is particullarly provided for. Nowhere in the act, is there any general provision for the holding of special meetings of stockholders. In Art. VI, secs. 1, 2 and 3, which provides for a special stockholders meeting to levy an assessment by the stockholders themselves, not only is a minority of the stockholders given the power to levy the assessment, but no provision whatever is made for notice to any stockholder by the law. The lack of this provision for notice is what we complain of.

In the statute we are discussing, a special stockholders meeting is provided for, at whic ha majority of the outstanding stock being represented, a majority of that quo-

rum may fix the liability of all the stockholders to pay any assessment voted by these stockholders represented at the meeting. In this case there were 250 shares, 126 shares constitute a quorum, if a quorum is present of only 126 shares, 63 shares then may levy the assessment. This assessment is binding from the day of the vote on every stockholder whether present or absent. It is true that the bank must sue in a court to enforce the assessment, but the only issue presented in such a suit is the question whether or not the assessment was levied in the manner provided by the statute. In this case Toombs demurred on the ground that no cause of action was set forth in plaintiff's petition (R-9) and that ground was overruled by the court. That question was not argued in the Supreme Court of Georgia because the ruling was sound. The statute had been complied with as written. So that the simple allegation that the superintendent of banks had determined that the capital stock had been impaired, that a stockholders meeting had been called, that a majority of the stock was represented at that meeting, and that a majoriy of the stock represented at the meeting had voted to levy the assessment, demanded a judgment in favor of the bank under the terms of this law.

From these facts it appears that the stockholders meeting provided for by this statute was a special tribunal erected by the state of Georgia for the purpose of fixing the liability of all the stockholders to pay the assessment levied. When the assessment was so levied, the court in which suit was brought was a mere machine for the enforcement of the liability already created. If the statute had been followed, the court was without discretion. The judicial act of determining whether it was provident or improvident to continue this bank in operation as a going concern, or to permit its liquidation as an insolvent bank was performed by the stockholders meeting. The court in which suit was brought was bound by the action of the stockholders, and could not go behind it.

For these reasons we contend that due process of law required that this stockholder should have notice of the meeting, and an opportunity to attend it and discuss this question with all the stockholders. He was not only entitled to notice so that he could be present himself, but he was entitled to have every other stockholder notified so

that they could be present. The whole body of the stockholders constituted a tribunal peculiar in its nature in the fact that the body of stockholders, regularly assembled in the meeting, composed court, jury, parties and witnesses. As a body they were the whole court. Toombs' right extended further than such notice as might enable him to be present, it included the right to have every stockholder notified, so that each of them might if he saw fit, be present, take part in any discussion, and join which ever side of the argument appealed to his judgment. Only by making provision for compulsory notice to each of the stockholders, whether they saw fit to attend or not, could this statute provide the notice and opporunity to be heard, which protects the rights of each individual stockhol' r.

What did occur in this case? Five directors of the bank held a meeting at which they called a stockholders meeting. (R-15). Fourt of these directors and J. H. Whitehead, held the stockholders meeting (R-5). Mr. R. C. Neely, Jr. appears to have had control of the meeting after it was called, because he seems to have controlled 120 shares. There is not a sylable of evidence in the record to show that any attempt whatever was made to notify any stockholder not present, except Toombs, and the alleged notice to Toombs was not sent to his actual address, but to Washington, Ga. It does not appear that Washington, Ga. ever was the address of Toombs. It does not appear that it was his last known address. The record is entirely silent on the question of his address except that at the time of these transactions he lived at Tampa, Fla. These directors of the bank who called and who held this stockholders meeting were its officers, W. H. Blount, the cashier, was present at both meetings. Being officers, their interest was to continue the operations of the bank if they could. They were drawing the salaries. Their interest in their salaries was probably much larger than their interest in the small number of shares of stock held by each. The broadest opportunity for fraud was presented, and the tribunal erected to determine judicially the rights of other stockholders was biased both by their personal interest, and by their desire to restore if possible their lost reputation as business men, somewhat tarnished by the failure of the bank they were managing. They were of course interested in having present only such stockholders as would vote as they desired.

The third assignment of error presents no Federal question. If this court sees fit, having assumed jurisdiction on a Federal question, it may decide all the questions in the case. That is a matter exclusively for the court. The record discloses that the assets of the bank were less than its liabilities in the sum of $55,422.76, that the capital of the bank was $25,000.00, and that certain depositors wrote off from their claims $30,422.76, so that this assessment could restore the capital of the bank (R-5). The assessment would have left the bank insolvent, if these depositors had not written down their claims. Toombs did not consent to this. None of the other stockholders appear to have consented to it. The stockholders meeting had no jurisdiction unless the assessment restored the capital of the bank. Their jurisdiction to levy the assessment was based on the fact that the capital of the bank was impaired. In this case the capital was entirely destroyed, and was not restored by the assessment. Can creditors, without the consent of their debtors, confer jurisdiction on any tribunal to fix the liability of their debtors, by entering a credit on their claims. These facts make the entire transaction on outrageous invasion of the rights of every stockholder in every bank in Georgia, because if this assessment is sustained, the most improvident acts of the officers of banks will be without the control of their stockholders or of the law.

Respectfully submitted,

W. A. SLATON,
Solicitor for Appellant.

P. O. Washington, Ga.

APPENDIX.

The material parts of statutes cited

Act of Dec. 16, 1895, Ga. Laws 1895 p. 58.

Section 1 Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same That from and after the passage of this Act, when the bank examiner or assistant bank examiner finds that the capital stock of any bank chartered under the laws of this state has become impaired or reduced from losses or any other source, the bank examiner shall require such bank to transfer from its surplus or undivided profits thereof to the capital stock a sum sufficient to make good such impairments or reductions, and if there is no surplus or undivided profits, or not enough t omake good said capital stock, then by an assessment upon the stockholders thereof.

Section II Be it further enacted, That should any bank fail or refuse to comply with this Act, the bank examiner shall report such refusal to the Governor, who is hereby authorized and directed to cause proper proceedings to be instituted for the forfeiture of the charter of such bank.

Act of August 6, 1925, Amending the act of 1919.

Acts 1929, p. 126

ARTICLE VI.

Impairment of Capital.

Section 1. Assessment of stockholders.

Whenever the Superintendent of Banks shall find that th ecapital stock of any bank has become impaired or reduced as much as ten per cent of its par value from losses or any other causes, the Superintendent of Banks shall notify and require such bank to make good its capital stock so impaired or reduced wtihin sixty (60) days, by an assessment upon the stockholders thereof, and it shall be the duty of the officers and directors of the bank receiving such notice to immediately call a special meeting of the stockholders for the purpose of making an assessment upon its stockholders sufficient to cover the impairment of the capital, payable in cash, at which meeting such assessment shall be made, provided that such bank may reduce its capital to the extent of the impairment if such reduction will not place its capital below the amount required by his Act. At any such special meeting of the stockholders, a majority of the stock outstanding at the time shall

be deemed a quorum, and such assessment may be made upon a majority vote of the quorum present.

Section 2. Assessment, how enforced. If any stockholder should refuse or neglect to pay any assessment which may be levied by the special stockholders meeting for the purpose of making good any impairment or reduction of capital within thirty days after such assessment shall have been levied, the directors of such bank shall have the right to sell to the highest bidded, at public outcry, for cash, a sufficient amount of the stock of such stockholder to cover the assessment after giving previous notice of such sale, once a week for two (2) weeks, in the newspaper in which sheriff's advertisements of the county in which the bank is located are published. In the event said stock is sold for less than the amount of the assessment upon same and necessary costs of sale, the bank shall have the right to sue such stockholder for the difference between the amount of the assessment and the proceeds of the sale. Out of the proceeds of the sale of said stock, the directors shall pay the necessary costs of sale and the amount of the assessment called for thereon and the balance, if any shall be paid to the person or persons whose stock has ben sold, or to the holder of the certificate therefor upon the surrender of such ~~certificate. A sale of the stock was as hrein provided~~ certificate. A sale of the stock as herein provided shall effect an absolute cancellation of the outstanding and shall make the same null and void, and the rights of any and all stockholders thereof shall terminate and a new certificate or certificates shal be issued to the purchaser or purchasers of such stock free from all liens, or claims whatsoever. The bank shall in addition to the right herein given to sell said stock also have the right to sue the stockholder for the full amount of said assessment in the event that said stockholder shall fail to pay the assessment so levied, in lieu of the sale of such stock and at the option of the bank.

Act of Aug. 26, 1825, amending Act of 1919.

Stockholders liability. Acts. 1925, p. 134.

Section 1. Stockholders liability, extent of. A bank incorporated under this act shall be responsible to its creditors to the extent of its capital and its assets; and

each stockholder shall be individually liabe for all the debts of said bank to the extent of the balance remaining unpaid on his or her shares of stock, and said stockholders shall be further and additionally liable, equally and ratably (and not one for another) to depositors of said bank for all moneys deposited therein, in an amount equal to the face value of their respective shares of stock; it being the true intent and purpose of this section, that as to depositors for all moneys deposited with said bank there shall be an individual liability upon each stockholder of such bank, over and beyond the par value of his or her original shares of stock equal in amount to the face value of said shares of stock; provided that said liability of the stockholders shall not prevent depositors from having equal right with all other creditors upon capital, property and assets of said bank, provided further that the funds realized from the stockholders liability as herein provided for shall not be distributed to those depositors holding a preference or a priority given them by law or otherwise nor to any depositor holding assets of said bank pledged as security for said deposit except to the extent of the amount of the excess of said deposit over the value of such security, and this provision shall apply, irrespective of whether the bank was or was not incorporated under this act.